DISSENTING VIEWS
to the Judiciary Committee Report on
H.R. 2965, the "Federal Prison Industries Competition in Contracting Act of 2005"

These views dissent from the Committee Report on H.R. 2965.

Introduction

The Federal Prison Industries program is not only the Department of Justice's most important correctional management tool, it is also one of the Department's most effective means of rehabilitating inmates, thereby reducing recidivism. Federal Prison Industries, Inc., or FPI was signed into law by President Roosevelt in 1934, in the midst of the Great Depression, as a way to protect the public by teaching prisoners real work habits and skills so that when they were released they would be better able to find and hold jobs to support themselves and their families, and be less likely to commit additional crimes. It is clear that the FPI program works to do just that. Follow-up studies covering as much as 16 years of data have shown that inmates who work in FPI are less likely to return to a life of crime after they are released. Research shows that inmates in FPI are 24% less likely to recidivate than similar inmates who didn't participate in FPI. Also, inmates in FPI are 14% more likely to find and maintain a job than those without FPI experience. Working in FPI has an even greater positive impact on minority offenders who are at the greatest statistical risk of recidivism. While the program certainly benefits offenders and their families, that is not the primary benefit of FPI from a public policy perspective. The real benefit to all of us is that, as a result of this program, we are less likely to be victims of crime.

What the Bill Does

H.R. 2965 would immediately eliminate the current "mandatory source" procurement authority for federal agency purchases from (FPI). While the bill provides for an agency option to purchase goods from FPI on a non-competitive basis which is phased out over a 5-year period, there should be no mistake -- the mandatory source rule in effect today would be eliminated immediately upon the effective date of this bill becoming law. The 1934 law required purchases by federal agencies to ensure work opportunities for inmates. The law recognizes that prison work operations are necessarily less efficient, less productive and more costly to run when compared to private work conditions. This is due in large measure to the high level of security and control that must be maintained in a prison factory, no or very low beginning work skills among the inmate workforce, and the objective of labor intensive activities to maximize the number of inmates employed. It is estimated that it takes four inmates to equate to the production of one private worker.

Ironically, most of the adverse impact of this bill will fall on private sector companies and their workers. FPI would not exist, and certainly could not offer quality products and services without the direct support of private sector companies that provide the raw materials and services FPI needs to produce its products. Each of these companies responded to solicitations issued by FPI (as a Federal agency, FPI follows all the Federal procurement regulations) and were awarded the contracts through competitive procedures. In order to fulfill their contractual obligations, these companies have hired law-abiding citizens as staff, added equipment, and some have even opened entire new plants. Many of these companies have FPI contracts which extend 5-10 years. FPI estimates that approximately 5,000 U.S. jobs, of which many are unionized, are sustained by the program.

Last year, FPI spent 74% of its sales revenue on purchases of raw materials, equipment, supplies, and services from private sector companies, 66% of which were purchased from small businesses including women, minorities and those who are disadvantaged. These expenditures exceeded $500 million last year. The private sector companies selling their goods to FPI have played by the rules, competing fair and square for the contracts. These companies and their employees do not deserve to be on the receiving end of an unjustified animus toward inmates or FPI.

The bill amends the current requirement in the law for agencies to purchase goods from FPI and establishes a competitive bid process for agency purchases of goods and services, unless the Attorney General, Bureau of Prisons BOP and FPI officials certify that they cannot safely run a prison without the particular contract award. It is unlikely that any of these officials will publicly admit such a level of incompetence in order to obtain an inmate work contract.

The bill makes a halfhearted effort to replace mandatory source and service contract jobs by providing a transition preference program for agencies using FPI, by authorizing new options such as providing products or services to charitable and non-profit organizations contingent on appropriations, by allowing FPI to provide services and products to federal agencies on a non-competitive basis if they would otherwise be provided from offshore, and by authorizing a work training program for FPI to produce goods and services for private companies if the goods and services are not produced anywhere in the U.S. However, there is no basis for concluding that these authorities would generate any significant inmate job opportunities, and certainly not replace the loss of current inmate jobs now performed by FPI under mandatory source and legally sanctioned commercial services.

In addition to restrictions on FPI's ability to produce products for federal agencies, the bill severely restricts the ability of FPI to obtain commercial service contracts. An alternative currently employed by FPI to decrease its federal market share for products, thus reducing its reliance on mandatory source, is performing services for companies which are currently being performed in foreign countries. These contracts are competitively obtained by FPI. Because of the restrictions in the bill, current FPI service contracts employing over 2,000 inmates, which involve no competition with domestic workers, will be eliminated. This work will then go back offshore.

The bill, which is purportedly designed to reform <u>federal</u> prison industries, also prohibits state prison industries from performing commercial service contracts. These restrictions will also have significant negative impact on numerous state correctional systems, hurt private sector businesses as well as prisoners and bring about increased numbers of crime victims as a result of inmates that do not have the rehabilitative and job skills training benefits of prison industries. Remy International (fomerly, Delco Remy) advised that for its service contracts with Virginia prison enterprises, for example, the restriction on state services in the bill would mean the following:

> "If section 7 passes, the bottom line is that we will ABSOLUTELY close our correctional facility factory in Virginia and every single one of those 230 inmate jobs and 25 civilian jobs will go to Mexico and China---no hyperbole here. Moreover, we recently sent 55 jobs to Mexico which we are considering returning to a

> correctional facility in West Virginia. Until we have a greater sense of security that Section 7 will be deleted, those jobs will remain in Mexico."

The same thing will occur regarding similar Remy International operations in other states, as well. The combined impact of the federal and state prohibitions on service contracts with private businesses will have the effect of eliminating a substantial number of federal and state prison industries service contracts where hundreds of civilian workers and thousands of inmate workers will lose their jobs.

Further, the bill will have an unintended discriminatory effect upon small, minority and women-owned businesses. As noted above, roughly two thirds of FPI purchases are made from small, women and minority owned and disadvantaged businesses. This is three times higher than the Small Business Administration goal, and one of the highest rates among all Federal agencies. It is well established that small businesses create more jobs per dollar of revenue than large businesses. Accordingly, to the extent that FPI's sales decline, the hardest hit will be the socio-economically disadvantaged businesses which are deliberately targeted to provide them federal procurement opportunities.

Of course, the adverse effects of reducing the FPI program will also disproportionately affect minority inmates since racial and ethnic minorities are disproportionately represented among the inmate population. Their representation in FPI jobs, however, mirrors this over-representation in the prison population. Important research on the value to inmates of working in prison industries jobs demonstrates that these minority inmates benefit at a higher rate than majority group members regarding their likelihood of remaining crime-free and being successfully employed upon release. Thus, job reductions in FPI of the magnitude certain to occur under the bill will fall hardest on racial and ethnic minorities.

We have already seen the effects of what eliminating mandatory source will do the FPI program. Since 2001, as a result of the "Levin Amendment", other similar legislative restrictions added to appropriations bills, and FPI Board restrictions, FPI's inmate employment level has fallen from 25% of the eligible inmate workforce to approximately 18% today. In the same time frame, 13 FPI factories have closed and the overall number of inmates employed has fallen from approximately 22,000 to approximately 20,000, while the overall prison population has increased by more than 23,000 inmates. Further, as a result of these restrictions, only about half of FPI's work results from use of mandatory source, with the vast majority of it resulting from activities supporting the Nation's war effort. When the war effort declines as anticipated, inmate employment levels are expected to also decline, precipitously, from current levels. Moreover, as mentioned above, over 2,000 inmates employed in FPI performing services for private sector entities will all lose their jobs as a result of this bill.

Some supporters of the bill suggest that vocational education is a good substitute for FPI work experience. The bill provides authority for increased vocational training programs. A vocational education program typically runs for two years or less and is generally thought better to be provided toward the end of the sentence. The average sentence for prisoners in the federal system is eight years. Whenever the vocational training is provided, the question becomes what to do with the other six years of the sentence prior to or after completion of what is considered a beneficial period of vocational education. Furthermore, unlike FPI which is completely self-sustaining, such vocational programs would require significant appropriated funding. Of course, the prospects of getting significant appropriations authorized by this bill approved for vocational education for inmates are virtually non-existent .

The bill also provides an authorization for FPI to make products and donate them to non-profit organizations as a way to maintain work opportunities for inmates. Producing products to give to charitable organizations would generate very limited work for inmates. Because the products would be donated, by definition the work would not be self-sustaining, transferring to the tax payer costs for a program that is currently wholly self-supporting. It is completely improbable that any funding will be made available for these work alternatives, and even with funding, the programs would not make up for many of the jobs that will be lost due to elimination of the mandatory source program and commercial service contracts.

Over the past decade, many offers have been made by defenders of the FPI program for viable alternatives to the mandatory source program opponents are dead-set on eliminating. Rep. Frank Wolf, Rep. Mark Green and Rep. Bobby Scott have all made proposals for viable inmate work alternatives to mandatory source. All such efforts have been rejected by members representing the business/labor coalition that opposes FPI. And defenders of FPI have been open to any and all alternatives for jobs suggested by opponents, with the simple proviso that mandatory source be phased down over an agreed period of time as those alternatives are brought on line. Recently, the Department of Justice (DOJ) entered the fray in an effort to work with the business/labor coalition in coming up with viable inmate work alternatives to mandatory source, but, after eight months of attempted negotiations, DOJ was also unsuccessful. In the final analysis, the coalition rejected its own proposal in order to, once again, arrive at the inevitable conclusion that it could prevail without compromises on anything that would allow FPI to attain and maintain its traditional goal of providing job skills training to 25% of the inmate population. As a result, the Department of Justice has gone on record as being unable to support H.R. 2965.

FPI Operations

The total revenues of FPI represent a very small portion (about 1/4 of one 1%) of total federal agency procurement dollars and only 2.5% of the overall federal market in the approximately 80 products and services it provides. The furniture and apparel industries are two of the industries in which FPI produces the highest volume of work. When asked, representatives of these industries conceded that FPI sales represent an "insignificant" and "negligible" portion of their industries, respectively. If such industries are having problems, it is clearly not due to the impact of FPI. In textiles, for example, it is said that over 600,000 jobs were lost during the past 10 years. There are roughly 6,600 inmates working in textiles in FPI. Clearly, the blame for the loss of 600,000 jobs cannot be a few thousand prisoners. The same is true of revenue reductions and job loss due to economic downturns in the office furniture business. FPI's office furniture sales total $140 million. This represents just 1% of the $13.4 billion domestic office furniture market.

In the period between 1990 and 2004, the federal inmate population increased from approximately 58,500 to almost 180,000, more than 207%. By 2011, the population is projected to reach approximately 225,000. All able-bodied inmates in the federal system are required, by law to work. Yet, few offenders enter prison with marketable work skills. The vast majority do not have even credible work habits such as showing up for work on time each day, and working cooperatively and productively with others. Such habits are required to maintain an FPI job just as they are required to obtain and maintain a job in the free world. While vocational education is important and ought to be available to all inmates, no amount of educational course work can substitute for the real world workplace experience of a meaningful job.

With the elimination of parole, good conduct credits, Pell grants, and other positive incentive programs, the federal prison system has little to offer as ongoing incentives for self development. The one shining exception is the FPI program. Non-FPI inmate jobs pay from $.12 an hour to $.44 cents an hour. The average non-FPI inmate job pays $.23 an hour. FPI jobs pay from $.23 to $1.15 per hour with the average pay being $.93 per hour. Only 18% of inmates currently have access to a FPI job. The remaining 80% work in non-FPI jobs. In addition to work training and benefits, FPI also serves as an effective institutional management tool by requiring good conduct to remain in the program and it serves as an excellent education development incentive. To hold down an FPI job, an inmate must have completed high school or be making steady progress toward obtaining a GED. This is true not only for those already in an FPI job, but also for those on the waiting list for a job, as well as those seeking to establish eligibility to be placed on the waiting list. Contributions to inmate development and prison management are important, but the least important of FPI's contributions. Reductions in crime, restitution payments to crime victims and support payments to inmate dependants are far more compelling reasons for the program. Last year, inmate workers paid almost $3 million toward these obligations.

It is readily conceded that there are problems with the FPI program which should be fixed. When a small business making a single product depends upon a government contract for its operations, FPI should not be able to take that business away. But this bill should be fixing the program - not gutting it by taking away all of its primary business sources all at once. While the bill suggests that the lack of competition is the problem, the bill seeks to strangle-hold FPI as a competitor not only by strengthening the prohibition against activities in the commercial market, but in the government market, as well. We should fix FPI's problems, but we should do so in ways that assure the viability of this vital crime reducing program. With additional prisons scheduled to come on line over the next few years, we can ill afford to diminish the FPI program's beneficial effects. About 98% of prisoners serving time will eventually return to society and our oversight focus should be on their rehabilitation and productive return as a matter of public safety. We can do better than this bill, and we should.

Robert C. Scott
Steve Chabot
Zoe Lofgren
Henry Hyde